

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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December 31, 2025

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 24-13590-X

Case Style: Deltona Transformer Corporation v. The Noco Company

District Court Docket No: 6:19-cv-00308-CEM-LHP

Please be prepared to address at oral argument the following questions:

1. According to our “prior panel precedent” rule, on matters of state law, this Court must follow its earlier decisions unless they have been overturned or abrogated by the full Court sitting en banc, by the United States Supreme Court, or by the state supreme court. *See United States v. Rowe*, 143 F.4th 1318 (11<sup>th</sup> Cir. 2025). Under post-*Erie* precedent, however, federal courts must “ascertain from all the available data what the state law is and apply it.” *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940); *see also Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018). Where, as here, the Florida Supreme Court has not yet addressed the question whether the FDUTPA requires a showing of “actual consumer harm,” and Eleventh Circuit precedent indicates that there is no such requirement, but a Florida district court of appeal has held that there is, how should the conflict be resolved?
2. Should we consider certifying the question whether the FDUTPA requires a showing of “actual consumer harm” to the Florida Supreme Court?

Clerk's Office Phone Numbers

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